

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:01

PLR-134468-10

Date:

October 05, 2010

LEGEND

Parent =

Sub 1 =

Sub 2 =

State A =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to your letter, dated August 12, 2010, as submitted by your authorized representatives on behalf of Parent, requesting a ruling, under Treas. Reg. §1.1502-75(b), that Sub 1 and Sub 2 have joined in the making of the initial

consolidated return filed by Parent for the taxable year ending Date 2. The information submitted in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by Parent and Sub 1 and Sub 2 and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of Parent's ruling request. Verification of information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Parent is a State A corporation that was incorporated on Date 1. On Date 1, Parent entered into a securities purchase agreement to acquire all the capital stock of Sub 1 and Sub 2 (the "Transaction"). The business of Sub 1 and Sub 2 in terms of assets, customers, and operations were unchanged by the Transaction.

On or around Date 3 it was discovered that a Form 1122 (Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Return) for each Sub 1 and Sub 2 was not filed with Parent's tax return for the tax year ending Date 2. The statute of limitations under §6501(a) has not expired for the return filed for the taxable year ending on Date 2.

REPRESENTATIONS

Parent has made the following representations:

- (1) All of the income and deductions for Sub 1 and Sub 2 was included in the Federal income tax returns filed by Parent as Parent of the consolidated group for the taxable year ending Date 2 and for any taxable year thereafter.
- (2) A separate Federal income tax return was not filed by Sub 1 and Sub 2 for the taxable year ending Date 2 or for any taxable years thereafter.
- (3) Sub 1 and Sub 2 were included on Parent's Form 851 (Affiliations Schedule) attached to the return for the taxable year ending on Date 2 and for all taxable years thereafter.
- (4) Except for the failure to timely file Forms 1122, Parent and Sub 1 and Sub 2 were eligible to file consolidated Federal income tax returns, with Parent as the common parent, for the taxable years ending Date 2.

APPLICABLE LAW

Treas. Reg. §1.1502-75(a)(1) provides, in part, that an affiliated group of corporations that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation that has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under section 1502, in accordance with Treas. Reg. §1.1502-75(b). If a group wishes to exercise its privilege of filing a consolidated return, such return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's tax return.

With regard to a corporation's consent for a group's first consolidated year, Treas. Reg. §1.1502-75(b)(1) provides, as a general rule, that the corporation's consent shall be made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return if it files a Form 1122 in the manner specified in Treas. Reg. §1.1502-75(h)(2).

Treas. Reg. §1.1502-75(h)(2) provides that if a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. For taxable years relevant to this ruling request, the group must attach to the consolidated return for the taxable year either executed Forms 1122 or unsigned copies of the completed Forms 1122 (and retain the signed originals in its records in the manner required by Treas. Reg. §1.6001-1(e)). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Treas. Reg. §1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member nevertheless has joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include: (i) whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) whether or not a separate return was filed by the member for that taxable year; and (iii) whether or not the member was included in the affiliations schedule, Form 851. If the Commissioner determines, under the facts and circumstances, that the member has joined in the making of the consolidated return, such member will be treated for purposes of Treas. Reg. §1.1502-75(h)(2) as if it had filed a Form 1122 for such year.

RULING

Based solely on the information submitted and representations made, we rule that each Sub 1 and Sub 2 is treated, under Treas. Reg. §1.1502-75(h)(2), as if it had filed a Form 1122 with the Federal income tax return filed by Parent for the taxable year ending on Date 2. Treas. Reg. §1.1502-75(b)(2).

PROCEDURAL STATEMENTS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of any other aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any condition existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling. This includes that no opinion is expressed as to the tax consequences relating to the transfer of Sub 1 and Sub 2 stock to Parent. Further, no opinion is expressed on whether Parent's interest in the stock of Sub 1 and Sub 2 met the requirements of section 1504(a)(2).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Mark J. Weiss
Reviewing Attorney, Branch 1
(Office of Associate Chief Counsel (Corporate))